STATE OF MICHIGAN

COURT OF APPEALS

ORION HOMES, INC.,

Plaintiff-Appellant,

v

CITY OF ROYAL OAK,

Defendant-Appellee.

UNPUBLISHED
August 16, 2005

No. 262386
Oakland Circuit Court
LC No. 05-064869-CH

Before: Zahra, P.J., and Cavanagh and Owens, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order denying its motion for summary disposition and dismissing the case. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased two adjoining tracts of land, Lots 44 and 45, in a platted subdivision. Plaintiff sought and received approval from defendant to split the premises into a total of five parcels, denominated as parcels A-E. Subsequently, plaintiff sought to divide parcel A into two lots. Defendant denied the request on the ground that such a division would exceed the four-division per less than ten-acre limitation permitted by MCL 560.108(2)(a).

Plaintiff filed a complaint for declaratory judgment and injunctive relief, asserting that its requested split of parcel A was permitted because pursuant to MCL 560.102(d), the "division" or splitting of a parcel "does not include a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance." Plaintiff asserted that the transfer of approximately ten feet of land to parcels B and C from Lot 44 was not a division of Lot 44, and that therefore, the further division of parcel A was allowed by statute.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10), noting that in *Sotelo v Grant Twp*, 470 Mich 95, 99 n 4; 680 NW2d 381 (2004), our Supreme Court held that a division does not include a property transfer between two or more adjacent parcels. The trial court denied plaintiff's motion and dismissed the case. The trial court found that *Sotelo*, *supra*, was inapplicable because it applied only in circumstances where parcels had not been platted, and concluded that because MCL 560.263 prohibited the dividing of a parcel into more than four parts, the further division of parcel A was not permitted.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature. *Frankenmuth Mutual Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998). We review an issue of statutory interpretation de novo. *Sotelo*, *supra* at 100.

We affirm. Contrary to plaintiff's assertion, *Sotelo*, *supra*, does not mandate a conclusion that the requested division of parcel A into two lots is permissible. In that case, the owner of the Filut parcel transferred a portion of that parcel to the owner of the adjacent Sotelo parcel. Thereafter, the remaining portion of the Filut property was divided into four parcels. The trial court upheld the defendant's decision denying a requested division of the reconfigured Sotelo property into four parcels on the ground that the number of divisions of that property exceeded that allowed by the Land Division Act (LDA), MCL 560.101 *et seq*. We reversed the trial court's decision, finding that the division of the Sotelo property satisfied MCL 560.108.[1] Our Supreme Court reversed this Court's decision, holding that the proposed division of the Sotelo property exceeded the four-parcel division limitation imposed by MCL 560.108(2). The *Sotelo* Court held that under the LDA, a parent parcel, i.e., an original parcel, as it existed on March 31, 1997,[2] could be divided into no more than four parcels. *Sotelo*, *supra* at 101. Here, Lots 44 and 45 were reconfigured and split into five separate parcels. Various provisions of the LDA allow a parcel in a recorded plat to be split into no more than four separate parcels. The property owned by plaintiff has been split to the extent allowed by MCL 560.108(2)(a) and MCL 560.263. The trial court correctly denied plaintiff's motion for summary disposition and dismissed the case.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens

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[1] *Sotelo v Grant Twp*, 255 Mich App 466; 660 NW2d 380 (2003).

[2] 1996 PA 591, effective March 31, 1997, added § 102 of the LDA, MCL 560.102.